

231641

EXPEDITED ACTION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ARIZONA ELECTRIC POWER COOPERATIVE, INC.)	
)	
Complainant,)	
)	
v.)	Docket No. 42113
)	
BNSF RAILWAY COMPANY)	
)	
and)	ENTERED
)	Office of Proceedings
)	
UNION PACIFIC RAILROAD COMPANY)	JAN -9 2012
)	
)	Part of
)	Public Record
Defendants.)	
)	

**COMPLAINANT ARIZONA ELECTRIC POWER COOPERATIVE, INC.'S
PETITION TO ORDER BNSF RAILWAY COMPANY AND UNION PACIFIC
RAILROAD COMPANY TO PUBLISH RATES IN ACCORDANCE WITH THE
BOARD'S ORDER OF NOVEMBER 22, 2011**

**ARIZONA ELECTRIC POWER
COOPERATIVE, INC.**

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Dated: January 9, 2012

Attorneys for Complainant

ARIZONA ELECTRIC POWER COOPERATIVE, INC.)	
Complainant,)	
v.)	Docket No. 42113
BNSF RAILWAY COMPANY)	
and)	
UNION PACIFIC RAILROAD COMPANY)	
Defendants.)	

Pursuant to 49 C.F.R. § 1117.1 and the Board’s decision served November 22, 2011 in the above entitled matter (“*Decision*”), Complainant Arizona Electric Power Cooperative, Inc. (“AEPCO”), hereby petitions the Board to order Defendants BNSF Railway Company (“BNSF”) and Union Pacific Railroad Company (“UP”) (jointly, “BNSF/UP”) to comply with the Surface Transportation Board’s (“Board”) directives in the *Decision* to establish and maintain joint through rates in accordance with the

Decision. AEPCO respectfully requests expedited review as AEPCO is already paying rates under tariffs that do not comply with the *Decision*.

BACKGROUND

BNSF/UP have failed to comply with the Board's directive to publish rates in accordance with the *Decision*. Indeed, they have turned what should have been a simple matter into an unnecessary problem as explained below.

On December 30, 2008, AEPCO brought a maximum reasonable rate case against BNSF/UP. The rates that were challenged were single factor, joint through rates from New Mexico origins, North Powder River Basin (Wyoming and Montana) origins, and the Signal Peak mine in Montana, all served exclusively by BNSF, to AEPCO's Apache Generating Station (Cochise, Arizona) which is served exclusively by UP.¹ In its *Decision*, the Board determined that the joint through rates being charged were unlawful, and it ordered BNSF/UP to publish and maintain rates at 180% of the carriers' combined variable costs. *Id.* at 2, 39.

Following the *Decision*, the parties awaited the Board's issuance of the 2010 URCS calculation – the data was needed to calculate the appropriate rates for 1Q12. The Board published the 2010 URCS data on December 9, 2011. AEPCO expected that BNSF/UP would promptly publish the appropriate joint through rates.² To its surprise,

¹ BNSF Common Carrier Pricing Authorities BNSF 57966 (New Mexico), 57988 (NPRB), and 58039 (Signal Peak).

² On December 9, 2011, the Board separately raised a question as to how to account for changes in the applicable rates if BNSF's 2010 URCS should be revised to exclude the acquisition premium that Berkshire Hathaway, Inc. paid in acquiring BNSF

on December 28, 2011, AEPCO received proportional rates for UP's portion of the respective movements rather than single factor, joint through rates from BNSF/UP.³ BNSF published corresponding proportional rates on December 30, 2011.⁴ The proportional rates from both railroads are effective as of January 1, 2012.

UP's purported rationale for the change is that it "simplifies future administration in light of the pendency of FD 35506 WCTL Petition for Declaratory Order regarding the purchase accounting treatment for the Berkshire Hathaway acquisition of BNSF," and it would be "easier . . . to establish and update quarterly two rates from the different interchanges rather than separate rates for each BNSF-origin."⁵ AEPCO responded to UP's email on December 29, 2011, noting that "BNSF/UP previously established joint through rates, AEPCO successfully challenged those rates, and the Board prescribed the maximum reasonable levels for those joint through rates. A proportional rate is simply not a joint through rate, regardless of whether BNSF establishes a corresponding proportional rate for the origins."⁶ AEPCO then urged BNSF/UP not to continue with the publication of proportional rates. BNSF/UP ignored

(Finance Docket No. 35506), but that matter is, and should remain, separate and distinct from the immediate need for BNSF/UP to comply with the Board's *Decision* and publish rates at 180% of the R/VC.

³ The newly published UP proportional rates are included herewith as Attachment No. 1.

⁴ The newly published BNSF proportional rates are included herewith as Attachment No. 2.

⁵ See *Email from Louise A. Rinn to Robert D. Rosenberg*, December 28, 2011 (Attachment No. 3).

⁶ See *Email from Robert D. Rosenberg to Louise A. Rinn*, December 29, 2011 (Attachment No. 4).

AEPCO's request, and BNSF published its proportional rate one day later, December 30, 2011.

BNSF/UP did not comply with the Board's *Decision*. AEPCO challenged single factor, joint through rates, not proportional rates. BNSF/UP do not have the authority to change the form of the common carrier authority once the Board has prescribed the applicable rates. Moreover, BNSF/UP offer no reasonable basis for changing to proportional rates. Specifically, the acquisition premium issue would simply require a "true-up," and the administration of rates going forward, as the Board itself recognized in its *Decision*, is not simplified by proportional, Rule 11 rates. AEPCO respectfully requests, for the reasons detailed below, that the Board order BNSF/UP to publish single factor, joint through rates in accordance with the *Decision*.

ARGUMENT

BNSF/UP's insistence on proportional rates should be rejected. As shown below, single factor, joint through rates are not proportional rates, and, in any event, the Board's *Decision* on the challenged rates and its related prescription foreclose BNSF/UP from selecting a different form of rate publication. Moreover, BNSF/UP chose joint through rates as their preferred methodology when they first established the rates in late 2008, and the Board specifically noted in its *Decision* the consequences of having chosen the joint rate vehicle versus proportional or Rule 11 rates. As such, BNSF/UP must live with joint through rates for the prescriptive period. Finally, AEPCO demonstrates that the new proportional rates are already problematic from a ministerial perspective.

I. BNSF/UP Are Not Permitted to Change to Proportional Rates

By virtue of the Board's *Decision* declaring the challenged rates to be unlawful, BNSF/UP must publish and maintain rates consistent with the *Decision*. *Id.* at 2, 39. The challenged rates were single factor, joint through rates, not proportional or Rule 11 rates. Consequently, the prescriptive effect of the Board's decision runs to joint through rates alone. *Accord Decision* at 13 (noting that the Board "will not treat the single joint rate as we would two separately challengeable rates" and that BNSF/UP having "decided that it was to their mutual benefit to move AEPCO's traffic under a single rate" they "cannot now ask the Board to treat them as if they had established a different kind of rate."); *see also Decision* at 14 ("In the end, the reasonableness of the *joint* rates 'charged and collected' . . . [are] being judged.") (emphasis in original). Thus, as a practical matter, the Board's decision has foreclosed BNSF/UP's opportunity to change the form of the tariff. *See also Tex-O-Kan Flour Mills Co. v. Abilene & S. Ry.*, 263 I.C.C. 91, 95-96 (1945) (ICC, having concluded a six year investigation into the reasonableness of the joint rates at issue, ordered carriers to maintain joint rates, specifically rejecting a *post hoc* proposal for proportional rates).

Indeed, UP, only days ago, acknowledged that it does not have the flexibility to change the form of the rate as it is trying to do here. *See Sunbelt Chlor Alkali P'ship v. Norfolk S. Ry. & Union Pac. R.R.*, Docket No. 42130, UP's Reply to Motion for Clarification (filed Jan. 6, 2012) ("*Sunbelt*") at 16 ("if the Board were to prescribe a joint rate for future movements of SunBelt's traffic after finding a violation of

section 10701(d)(1), UP would not have the right under section 10701 (c) to insist that SunBelt use a local rate . . . ”).⁷

Even if BNSF/UP had some rational legal basis for their change in common carrier rate form, which was not advanced to AEPCO, BNSF/UP’s change is especially egregious in light of the history of the joint through rate in this case. BNSF/UP chose to make the workings of the joint through rate a cornerstone of their reply evidence arguing that AEPCO could not design its SARR configuration as it saw fit, but must, instead, build a SARR that adhered to the interchange locations that BNSF/UP had privately selected and for which AEPCO had no say. The Board devoted several critical pages of its *Decision* to considering and *rejecting* BNSF/UP’s novel arguments. Of particular relevance here are the following Board findings:

[D]efendants are attempting to use selectively their joint and separate status to their benefit, having earlier asserted (successfully) that the Board should not look behind the joint rate to determine each carriers individual responsibilities, costs, and revenues Now, defendants want to be able to issues a single joint rate, deny the shipper access to their internal divisions of that single rate, but then also be treated as different legal entities for purposes of the SAC analysis. They cannot have it both ways.

* * * *

[D]efendants could have insulated themselves from a joint-rate challenge by issuing separately challengeable rates to the

⁷ To be sure, UP caveats the above quote in a footnote wherein it makes the self-serving claim that the Board’s *Decision* did not order any particular form of rate thereby leaving UP and BNSF free to publish any form of rate they desire. *See id.* at n.9. Of course, this statement plainly ignores the considerable history surrounding the joint through rate in this case, and it suggests that the Board granted the carriers such leeway, which it did not.

chosen point of interchange instead of a single joint rate. . . .
[D]efendants here made a different choice and quoted a single
joint rate for service As a result, in a challenge to that
rate, AEPCO's only recourse for rate relief is to challenge the
single joint rate for service from the origin to the destination. .
. . BNSF and UP both decided that it was to their mutual
benefit to move AEPCO's traffic under a single rate. They
cannot now ask the Board to treat them as if they had
established a different kind of rate.

Id. at 13. While AEPCO acknowledges that the proportional rates offered here may not be the kind of separately challengeable rates envisioned in the Board's discussion quoted above,⁸ the change proposed by BNSF/UP appears to be a step on a slippery slope to changing AEPCO's hard won joint through rate prescription to separately challengeable rates with fixed interchange points that would maximize BNSF's and UP's opportunity to thwart any challenges to their rates.⁹

⁸ "[P]roportional rates are a form of combination rates but with a significant difference. While local and joint rates can be added together without qualification to form a combination rate, proportional rates may only be added together to form a through rate under specified conditions. That is, proportional rates provide that they may only be used for shipments originating beyond a certain point or destined beyond a certain point." *Metro. Edison, Co. v. Conrail, Inc.*, 5 I.C.C.2d 385, 402 (1985). The reasonableness of a challenged proportional rate is usually determined on the basis of the entire movement because such rates "may only be used for shipments originating beyond a certain point or destined beyond a certain point." *Id.* at 402, 408.

⁹ AEPCO's concerns may never materialize, but BNSF has, on several occasions, sought to have SAC rate cases reopened. See e.g. *W. Tex. Utils. Co. v. Burlington N. & Santa Fe Ry.*, Docket No. 41191 and *Ariz. Pub. Serv. Co. & PacifiCorp v. Burlington N. & Santa Fe Ry.*, Docket No. 41185. If AEPCO has not objected to material changes in the form of the tariff during the term of the ten-year rate prescription, it is not hard to envision that BNSF/UP might argue on reopening that AEPCO had "agreed" to such changes and that any changed circumstances should be reflected in a revised SARR that limits AEPCO's routing as envisioned by the carriers in their earlier reply evidence.

AEPCO also notes that UP has recently taken to creative maneuvering with its common carrier pricing arrangements: (i) it refused to provide certain rates to

II. A Proportional Rate is Not a Single Factor, Joint Through Rate

BNSF/UP's decision to publish proportional rates, and UP's rationale for doing so, suggest that proportional rates are the equivalent to single factor, joint through rates. This suggestion is incorrect. As the Board explained in its *Decision*:

[BNSF/UP's] argument ignores the legal realities of jointly-issued through rates. A jointly-issued through rate is provided to a shipper in a single quote; the shipper does not deal independently with each carrier that moves its product. Carriers participating in a joint movement are jointly and severally liable in civil court (and at the agency) for action arising from this movement. As such, for practical purposes, when carriers elect to offer a through rate, they are treated as a single legal entity.

Id. at 12 (footnotes omitted).

In contrast, a proportional rate (even if the overall rate is the same) is a different vehicle with important differences and benefits that inure to the shipper. As the D.C. Circuit has explained:

Proportional rates . . . are rates published by a single carrier or mode of carrier applicable to that part of a movement of a through shipment which the publishing carrier itself handles. A proportional rate applies only to through shipments having a prior or subsequent movement over the line of another carrier. . . . Commonly, each participating carrier in a through route separately publishes its own proportional rate; in combination, these separate proportional rates constitute the through rate. Thus, proportional rates closely resemble the divisions of joint through rates. Correspondingly, a

Intermountain Power Agency until one month remained in the applicable contract; (ii) it canceled a joint through rate with NS for shipments at issue in the *Sunbelt* matter, published a local rate instead, and then moved to be dismissed from the case; and (iii) UP tried to argue in the instant case that the joint through rate was effectively a separate rate for SAC purposes.

combination of proportional rates is similar in purpose and effect to a joint through rate.

There are, however, important differences between the joint and proportional through rates In a joint rate with agreed divisions, as opposed to a combination of proportional rates, the total transportation charge is published as a single rate in one tariff Joint through rates result in the simplification of, among other things, routing, documentation, and the calculation of charges and billing; this resultant simplification has been put forth as a major advantage of the joint through rate method for filing tariffs.

Pennsylvania v. ICC, 561 F.2d 278, 282 (D.C. Cir. 1977) (emphasis added).¹⁰ See also *Decision* at 12 n.12 (noting with approval the benefits cited in *Pennsylvania v. ICC*).

While a particular BNSF/UP proportional rate must necessarily equal, in total, the rate that would be charged under a joint through rate, lest it violate the *Decision's* prescription, AEPCO is potentially deprived of some of the real benefits of a joint through rate, including the simplified determination of rates and joint and several liability, which may yet be an issue for collecting reparations. Such a result is patently unfair as BNSF/UP chose the form of the challenged rates in the first instance.

¹⁰ Proportional rate participants are not necessarily joint and severally liable for damages as joint through rate participants usually are. *Accord Huron Valley Steel Corp. v. CSX Transp. Inc.*, Docket No. 40385, 1992 WL 251839 (ICC served Sept. 30, 1992) at *2 (“Commission and the courts have generally found the participants in a joint rate, *and sometimes even in a proportional rate*, jointly and severally liable for damages.”) (emphasis added).

III. Calculation of Rates Under the Proportional Rates is Already Problematic

The calculation of the applicable rates under the Board's prescription should have been a simple matter. Instead, BNSF/UP's improper publication of separate proportional rates has already resulted in unnecessary complications in calculating the rates to be charged.

First, AEPCO has been unnecessarily burdened with having to determine whether each railroad properly calculated its portion of the rate – a task that is plainly simpler when reviewing one set of data. As this process must be repeated each calendar quarter, AEPCO submits that proportional rates will result in double the work for no reason other than UP's concerns over the acquisition premium issue, which may, or may not, be a factor in the future, which is more easily resolved between the carriers versus forcing AEPCO to continue on with separate calculations *ad infinitum*. In addition, because BNSF/UP have specified that the rates are governed by Rule 11, AEPCO is expecting a further burden of having to reconcile and pay two separate freight bills for each shipment. AEPCO is also concerned that differences between the carriers, which result in rates that do not conform with the prescribed rates, might devolve in to a finger-pointing exercise between BNSF and UP that will further burden AEPCO.

The problems with separate quarterly proportional rate calculations are exemplified in the 1Q12 calculations made by UP and BNSF. Specifically, UP and BNSF do not agree on some key elements of the nine URCS Phase III inputs. For example, UP calculates the average tons per car from all New Mexico origins rather than

from the Lee Ranch and El Segundo mines separately (117.1). *See* Attachment 5.¹¹

Conversely, BNSF, consistent with the *Decision*, calculates the average tons per car from Lee Ranch (117.0) and El Segundo (117.7). *Id.* The differences are relevant because the “proportional rates” will obviously not equal the rate that would have been calculated using the joint through rate as prescribed by the Board in the *Decision* if the parameters are different on the proportional segments due to averaging or other mismatches in data, such minor difference are sure to cause further headaches and disruptions (*e.g.*, if UP is relying on tons per car at interchange rather than the tons per car measured at origin). The same problem arises with cars per train. *Id.* Indeed, UP’s average calculation of the proportional segment for New Mexico traffic is \$0.03 greater than AEPCO’s own calculation based on the specific data rather than averaging. *Id.*¹²

Finally, the problems of moving from joint through rates to proportional rates outweigh UP’s supposed concerns about the acquisition premium. Any backward looking adjustments associated with the acquisition premium will only impact a few quarters where the BNSF 2010 URCS is used. These adjustment are easily resolved with a true-up, and BNSF and UP can work out the mechanics between themselves just as they have throughout the many years that they have applied joint through rates to AEPCO

¹¹ *See also* Attachment No. 1 (final page) and Attachment No. 2 (final page) (the individual calculations provided by the railroads). Attachment No. 5 is a summary prepared by AEPCO.

¹² AEPCO also notes that BNSF/UP have used different characteristics for PRB and Montana origins than agreed to by the parties in their submission of joint operating characteristics in their September 11, 2009 Joint Submission of Operating Characteristics.

traffic. Conversely, moving to proportional rates creates added problems that will persist throughout the prescriptive period.

CONCLUSION

BNSF/UP have no authority to publish proportional rates, and proportional rates are not equivalent to single factor, joint through rates. Moreover, the special circumstances in this case surrounding the form of the through rate tariff should plainly foreclose BNSF/UP from changing the form of the tariff, even if they believe that the *Decision* gave them such discretion. Finally, the publication of proportional rates creates unnecessary ministerial problems that are easily remedied by publishing a single factor, joint through rate. Therefore, AEPCO requests that the Board promptly order BNSF/UP to publish single factor, joint through rates in accordance with the Board's *Decision*.

Respectfully submitted,

ARIZONA ELECTRIC POWER
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Dated: January 9, 2012

Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2012, I caused copies of the foregoing filing to be served on counsel for Defendants Union Pacific Railroad Company and BNSF Railway Company by electronic mail as follows:

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/s/ Daniel M. Jaffe

ATTACHMENT NO. 1



UP TARIFF 4221

UNIT TRAIN COAL COMMON CARRIER TARIFF

Publication of rates, terms and conditions applying on:

**Unit Coal Trains with movement from, to or via the
Union Pacific Railroad Company**

**Issued By:
G. A. NAVALKAR - MANAGER PRICING SERVICES**

**Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179**

**Issued: December 11, 2008
Effective: January 1, 2009**

UP 4221



UP 4221

Item: 1
DEFINITION OF ITEM SYMBOLS

DEFINITION OF ITEM SYMBOLS

A - Add
C - Change
D - Decrease
I - Increase
X - Expire



UP 4221

**Item: 5
GOVERNING RULES**

GOVERNING RULES DOCUMENTS

This publication is governed, except as otherwise specifically provided herein, by the provisions of publications below as amended from time to time:

Bureau of Explosives	BOE 6000-series
Directory of Hazardous Materials Shipping Description	(Issued by RAILINC)
Official Railroad Station List	OPSL 6000-series
Official Railway Equipment Register	RER-series
Standard Transportation Commodity Code	STCC 6001-series
Uniform Freight Classification	UFC 6000-series
Union Pacific Railroad Company Accessorial Tariff	UP 6004-series
Union Pacific Railroad Governing Rules for Regulated Traffic	UP 6007-series
Union Pacific Railroad General Rules for Coal Trains	UP 6602-series; UP 6603-series; and UP 6605-series
Association of American Railroads "AAR Interchange Rules" Manual	(Issued by AAR)
Association of American Railroads "Open Top Loading Rules Manual"	(Issued by AAR)



UP 4221

Item: 11
REVISIONS/CANCELLATIONS

REVISIONS/CANCELLATIONS

Unless otherwise provided, as this Pricing Document (or items contained herein) is revised, current letter suffixes cancel prior suffixes. Letter suffixes will be used in alphabetical sequence starting with A. Example: Pricing Document 3000-A cancels 3000, 3000-B cancels 3000-A; item 100-A cancels Item 100, Item 100-B cancels Item 100-A.



UP 4221

Item: 100-A
GENERAL RULES AND DEFINITIONS

General Rules and Definitions

For purposes of applying this Tariff, the following will govern.

Commodity/Coal: Coal, a mineral substance whose Standard Transportation Commodity Code (STCC) as set forth in the Standard Transportation Commodity code tariff ICC STCC 6001-Series, begins with the two digits 11.

Origin(s): Coal mine origins as specified in individual Rate Items. For interline traffic received moving under a local or proportional rate, Origin(s) includes the interchange where UP receives the loaded coal train from its connection.

Destination(s): Rail station capable of receiving trainloads of Coal as specified in individual Rate Items. For interline traffic forwarded moving under a local or proportional rate, Destination(s) includes the interchange where UP forwards the loaded coal train to its connection.

Shipper: Party who is paying the freight charges under this Tariff. Shipper shall have the same meaning as Customer.

UP: Union Pacific Railroad Company

Railroad: UP and any other rail carrier that is a party to this Tariff for a joint rate to the specified Destination as listed in Items 1000-9999 of this Tariff.

Rates: Are in U.S. dollars and cents per net ton of 2,000 lbs. Rates apply only for Coal consumed at the station(s) noted in the Item Description of the Rate Item, unless otherwise provided. Railroad may adjust or cancel Rates subject to 20 days' notice for increases.

Rate Item: Schedule of Rates, charges, and terms applicable to particular Destination, as listed in Items 1000-9999 of this Tariff.

Diversions: Diversions may be permitted under certain circumstances, as provided in UP Circular 6602-series; 6603-series or 6605-series.

Request for Service: Transportation under this Tariff will take place on lines which are subject to intense use and operational limitations. In order to maximize the utilization of the rail lines and loading facilities for the benefit of all parties involved in transportation of Coal from Origins, UP must coordinate with the mine operators and Shippers. Shipper requesting transportation under this Tariff must provide a "Monthly Coal Tonnage Forecast" as provided in Item 250 of UP Circular 6602-series; 6603-series or 6605-series. That Item defines the monthly process for the submission of forecasts by both the receivers of coal and the producers who will load those tons for shipment via UP. This condition applies in addition to any specific notice requirements stated in this Tariff.

Shipper Owned or Leased Equipment: Railcars owned, leased or otherwise furnished by Shipper for transportation under this Tariff.

Railroad Owned or Leased Equipment: Railcars owned, leased or otherwise furnished by Railroad, subject to availability, for transportation under this Tariff.

Equipment: If Rate Item for Destination specifies Shipper Owned or Leased Equipment, Shipper will provide suitable equipment at no charge to Railroad. Railcars shall be compatible with the loading facility and the unloading

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facility.

All railcars used for transportation under this Tariff shall be open-top hopper or gondola railcars, and shall have a marked capacity sufficient to meet the Minimum Lading Weight per Railcar as specified in the Rate Item for Destination.

Loaded railcars shall not exceed the maximum gross-weight-on-rail ("GWOR") associated with the route of movement, but in no case greater than 286,000 lbs. In some corridors the GWOR will be less than 286,000 lbs, in which case Railroad will note in the applicable Rate Item the maximum weight capability on the route of movement.

Such railcars shall also meet or exceed the Association of American Railroads ("AAR") Interchange Rules, as amended from time to time, and shall have been inspected and approved by UP for safety in accordance with Federal Railroad Administration ("FRA") regulations, as amended from time to time. Railcars must also comply with Item 226 of UP 6602-series; 6603-series and 6605-series.

Transportation under this Tariff is subject to the provisions of the AAR Interchange Rules, including those rules governing railcar repair, maintenance, damage, or destruction, in a manner prescribed by the "Field Manual of Interchange Rules" and the "Office Manual of Interchange Rules" adopted by and currently in use by the AAR.

Maximum Volume: The maximum volume that Railroad will transport under each Rate Item is specified in the Rate Item.

Trainsets: UP reserves the right, in its sole judgement, to limit the number of trainsets that will be in service pursuant to each Rate Item in order to retain fluidity or to meet loading schedules, or if adding trainsets in active service would not materially increase delivered tonnage.

Annual Volume Estimate: For planning purposes, Shipper shall advise Railroad of its intent to ship under this Tariff as specified in Monthly Coal Tonnage Forecast. In addition, not later than July 1 each year, Shipper shall provide to Railroad an estimate of tons of Coal anticipated to be loaded in the next calendar year by month ("Annual Volume Estimate"). This information should include tons from each of its suppliers and origins as soon as it is known. The nominated tonnage must be ratable. A monthly nomination is ratable if it is no more than 10% greater or 10% less than one-twelfth of the annual total. If Shipper decides to begin shipments within any time-frame other than a full calendar year basis, then Shipper shall provide Railroad an Annual Volume Estimate for the remaining months of that calendar year, at least ninety calendar days prior to the first shipment, unless otherwise mutually agreed. The Annual Volume Estimate must be submitted electronically via UP's secured website ([www.uprr.com/customers/energy Bulk Train Planner](http://www.uprr.com/customers/energy/BulkTrainPlanner)), and may be revised at any time prior to October 1 each year.

Service: Railroad shall use reasonable efforts to transport Coal based on the circumstances when the transportation occurs. Railroad shall not be responsible for delays due to weather, track maintenance or construction, equipment failures, embargoes, Acts of God, labor activities, including strikes, denial of or limitation of access to track controlled by any party other than Railroad, excessive demand, or events outside the control of the Railroad. Railroad intends to use reasonable efforts to deliver the Annual Volume Estimate and the Monthly Coal Tonnage Forecast furnished by Shipper but has no binding obligation to comply with these planning estimates.

In no event shall Railroad be liable for any service guarantee. Further, to the extent allowed by law, under no circumstances will Railroad be liable for any direct, indirect, actual or consequential damages or any other liability, or additional costs of any kind arising out of or caused by service interruptions, reductions, or excessive demand.

Freight Charges: Freight charges shall be calculated based on the greater of the actual lading weight of all Coal in a train as determined by weighing pursuant to the rules in UP Circular 6602-series; 6603-series or 6605-series, or the minimum tender per shipment weight, which is specified by Destination in the Rate Item.

Payment: Railroad may invoice Shipper by means of mail or electronic transfer of documentation. Shipper shall pay the amount invoiced by means of mail or electronic transfer of funds within 15 calendar days after date of invoice. Late payment and other credit terms shall be in accordance with UP's credit terms as published in Rule 62 of UFC 6000-series. If Shipper fails to pay in accordance with the requirements or if, in UP's sole discretion, adverse credit conditions occur which could affect Shipper's ability to meet payment terms, UP may revoke credit privileges and institute any one or more of the Revocation of Credit and Other Remedies procedures outlined in UFC 6000-series.

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Notices: Notices to UP should be addressed to:

Attn: General Director- Logistics and Demand
Union Pacific Railroad
Marketing and Sales Energy Group
Stop 1260
1400 Douglas Street
Omaha, NE 68179
Fax (402) 501-0163

Other General Rules: Shipments made under this Tariff shall be subject to Circular UP 6602-series; 6603-series or 6605-series or their successors, which contain the General Loading Rules, Accessorial Charges and Fuel Surcharge for Coal Trains moving via UP, and related items.

Services or other matters not specifically addressed in this Tariff shall continue to be governed by and paid for in accordance with rules, regulations, statutory provisions and provisions of the applicable tariffs, rules circulars, publications or in other applicable rate and service terms established under 49 U.S.C. Section 11101 or 10702. Such rules, regulations and provisions, as amended from time to time, are herein incorporated by reference without being specifically listed. To the extent any such rules, regulations or provisions as they relate to the parties hereto are inconsistent with the terms of this Tariff, the terms of this Tariff shall govern. When reference is made in this Tariff to tariffs, circulars, items, notes, rules, etc., such references are continuous and include revisions and supplements to and successive issues of such tariffs, circulars, items, notes, rules, etc.

In the event of any conflict between the terms of this Tariff and the terms of the Rate Item, the provisions of the Rate Item shall govern.

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UP 4221

Item: 2300

Item Desc: AZ, Cochise, Apache Generating Station

Unit Coal Trains
Proportional Rates from Pueblo, CO and Deming, NM
to Apache Generating Station, Cochise, AZ

For billing purposes use the following rate authority: UP 4221-2300

STCC/GROUP	STCC	DESCRIPTION
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11		Coal
----	--	------

GENERAL RULE ITEM 2300

Rates in this Item are not subject to fuel surcharge.

Unloading and Switching: In addition to the terms and conditions of Item 390-series of UP Circular 6605, Shipper shall be responsible for unloading of trains at Destination, including operation of locomotives to unload the train, dumping of each railcar, switching, train movement and other related train handling required to accomplish the unloading and tender of the empty train to UP. Other related train handling events at Destination shall include, but is not limited to, switching of bad order cars, and switching repaired and spare cars into the train. Use of UP locomotives shall be subject to the execution of a locomotive operation agreement which will cover insurance and liability requirements. Shipper shall be allowed 10 hours free time to unload the train and perform switching as described herein.

In the event Shipper elects to have UP operate the locomotives during the unloading process and perform switching as described above, then shipper shall pay UP \$1,500.00 per train for such work. When UP crews operate the locomotives to unload, free time to unload shall be 5 hours.

GENERAL APPLICATION RULES FOR ITEM 2300

1. Applies in Customer/Shipper-owned or -leased equipment bearing private (non-railcarrier) reporting marks.
2. Mileage allowance payment on private equipment will not apply.
3. Free time to unload will be 10 hour(s).

APPLICATION AND RATES

COLUMN	RATE APPLICATION RULES
--------	------------------------

- | | |
|----|---|
| 1. | <p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 118 tons per car.</p> <p>Applies if minimum tender per shipment is 116 Car(s).</p> <p>Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11.</p> <p>Applies when prior movement was via rail on the BNSF.</p> |
|----|---|

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Continued on next page

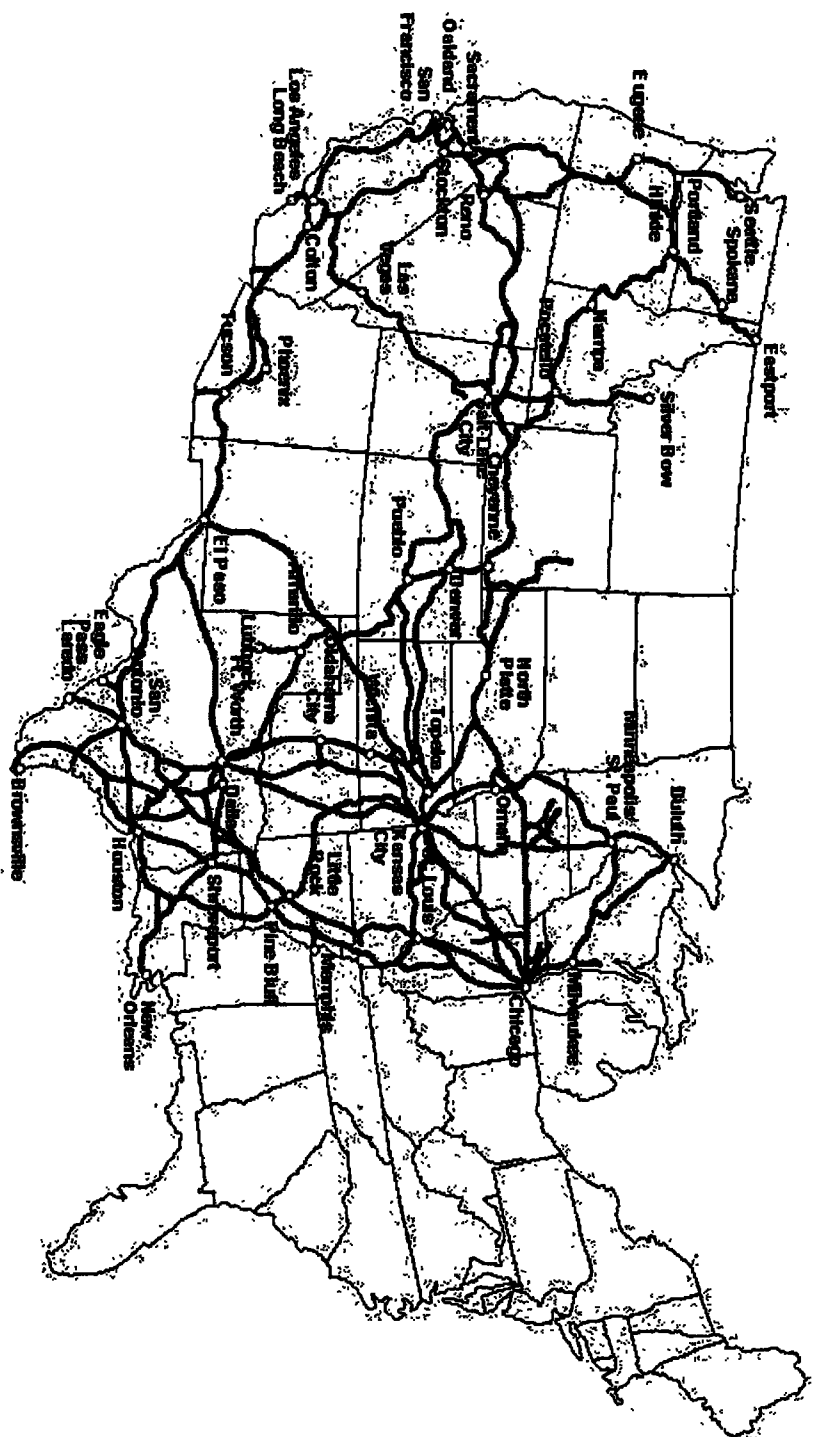
COLUMN	RATE APPLICATION RULES	Col. 1 Rate	Route Code/Group
	Applies when prior origin is SPRING CREEK MINE, MT, OR Applies when prior origin is DECKER, MT, OR Applies when prior origin is PEAKS, MT, OR Applies when prior origin is EAGLE JCT, WY, OR Applies when prior origin is BUCKSKIN JCT, WY, OR Applies when prior origin is RAWHIDE JUNCTION, WY, OR Applies when prior origin is E GILLETTE JCT, WY, OR Applies when prior origin is DRY FORK JCT, WY.		
STCC: 11 Coal From: CO, PUEBLO To: AZ, COCHISE		20.11	UP

APPLICATION AND RATES			
COLUMN	RATE APPLICATION RULES	Col. 1 Rate	Route Code/Group
1.	<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 117 tons per car.</p> <p>Applies if minimum tender per shipment is 117 Car(s).</p> <p>Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11.</p> <p>Applies when prior movement was via rail on the BNSF.</p> <p>Applies when prior origin is LEE RANCH, NM, OR Applies when prior origin is EL SEGUNDO JCT, NM.</p>		
STCC: 11 Coal From: NM, DEMING To: AZ, COCHISE		4.26	UP

Issued:
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 Expiration: January 18, 2012

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Page: 2 of 2
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 Concluded on this page



Arizona Electric Power
1/1/12 Rates - For Union Pacific Only
Reflects 2010 URCS at 3Q11 Level

Line	Description	Source	PRB Origins Pueblo ¹	NM Origins Deming ²
1	Railroad		UP	UP
2	Loaded Miles		928.6	149.7
3	Shipment Type		R/T	R/T
4	Freight Car Number		116.0	117.5
5	Freight Car Type		Open Hopper	Open Hopper
6	Freight Car Ownership		Private	Private
7	Tons Per Car		118	117.1
8	Commodity		11 Coal	11 Coal
9	Type of Train		Unit	Unit
10	Variable Cost Per Train @ 2010 Cost Level	Phase III Costing Program	\$139,803.99	\$29,741.46
11	Freight Car Number	Line 4	116	117.5
12	Variable Cost Per Car @ 2010 Cost Level	Line 10 / Line 11	\$1,205.21	\$253.12
13	Tons Per Car	Line 7	118	117.1
14	Variable Cost Per Ton @ 2010 Cost Level	Line 12 / Line 13	\$10.21	\$2.16
15	Composite Index 2010 to 3Q11	Composite Index	1.09374442	1.09374442
16	Variable Cost Per Ton @ 3Q11 Cost Level	Line 14 * Line 15	\$11.17	\$2.36
17	Jurisdictional Threshold		180%	180%
18	3Q11 Rate @ Jurisdictional Threshold Level	Line 16 * Line 17	\$20.11	\$4.26

1) Pueblo: BN O/D, 695 miles; UP R/T, 928.6 miles
Cars per train and tons per car based on actual operating statistics for the most recent quarter that AEPCO received a NPRB train (i.e. 3Q09).
BN miles from Decker, MT

2) Deming: BN O/D, 285.8 miles; SWWR R/D, 53.3 miles; UP R/T, 149.7 miles
3Q11 actual cars per train and tons per car
BN miles are the weighted avg for 3Q11 based on origin

ATTACHMENT NO. 2

**BNSF Railway Company ("BNSF")
Common Carrier Pricing Authority BNSF 58279**

Effective Date: January 1, 2012

Commodity: Raw Subbituminous Coal, STCC 11-21-series. Not applicable for transportation of beneficiated, enhanced or synthetic coal; provided however, Coal treated with additives used exclusively for dust control or to reduce freezing shall not be considered "enhanced" or "beneficiated".

Origins: Lee Ranch Mine (Lee Ranch), NM – "LRM"
El Segundo Mine (El Segundo), NM – "ESM"

Destination: Deming, NM for movement on Union Pacific Railroad from Deming to Arizona Electric Power Cooperative, Inc. Apache Generating Plant near Cochise, AZ

Route: Rule 11, BNSF – Deming, NM for movement beyond to the Apache Generating Plant via the Union Pacific Railroad

Rule 11 Rates and Minimum Weights: Weights stated in Net Tons Coal;
Rates stated in U.S. Dollars Per Net Ton Coal:

<u>Origin</u>	<u>Minimum Weight Per Carload</u>	<u>Shipper- provided Railcars</u>
Lee Ranch, NM	117	\$9.74
El Segundo, NM	117	\$9.54

Freight Charges will be assessed on the basis of the applicable Minimum Weight per Trainload or the actual weight of Coal per Trainload whichever is greater.

Railcar Supply and Tender Requirements: Shipper-provided Railcars shall be aluminum open top rapid discharge hopper cars suitable for loading not less than 117 net tons Coal per carload from LRM/ESM origin, not subject to any private car mileage allowance and furnished at no cost to BNSF.

The Minimum Tender for a train of Shipper-provided Railcars shall be one hundred seventeen (117) such Railcars from LRM/ESM origins. In the event that Minimum Tender for a train of Shipper-provided Railcars is not met due to BNSF's failure to switch such Railcars into a train at such location where BNSF has agreed to provide and Shipper has requested such service, the Minimum Weight per Trainload shall be reduced by an amount equal to the appropriate net tons for each Railcar (117 net tons) not so switched which results in a train of less than Minimum Tender.

Claims for damage to or destruction of either Shipper-provided or BNSF-provided Railcars shall be handled in accordance with the procedures set forth in the Field Manual and Office Manual of the Association of American Railroads Interchange Rules, as amended from time to time. Notwithstanding the foregoing, BNSF shall not be liable for loss or damage caused by defects in design, materials, or workmanship of Shipper-provided Railcars, or events of force majeure, or to improper loading or unloading performed by Shipper, its agent, its contractor, consignor or consignee.

Weights: Lading Weights shall be ascertained at Origin by Shipper, its agent, or the Coal mine operator, at no charge to BNSF, and will be provided to BNSF via either electronic data interchange or facsimile upon release of a loaded train. BNSF shall have the right to inspect and certify the Origin scales. The

**BNSF Railway Company ("BNSF")
Common Carrier Pricing Authority BNSF 58279**

Minimum Weight per Trainload shall be the product of the Minimum Weight Per Carload times the Minimum Tender.

Loading: Shipper or its agent shall be responsible for the provision of appropriate loading facilities. All cars in each shipment shall be tendered to BNSF for loaded movement subject to the provisions of BNSF Price List 6041-series in effect on the date that service is provided.

Accessorial Services: BNSF-provided services ancillary to the linehaul transportation of Coal shall be provided in accordance with BNSF Price List 6041-series in effect on the date such services are requested.

Billing and Payment: Freight Charges will be billed by BNSF and paid by Shipper within ten working days of receipt of a bill therefor. BNSF will bill each shipment under the terms of the Uniform Straight Bill of Lading. All railcars for each shipment are to be billed on one (1) Bill of Lading. This **Common Carrier Authority BNSF 58279**, correct address and patron code must be shown on the Bill of Lading to insure accurate billing. In the event Shipper does not make timely payment, or if adverse credit conditions occur, which in the judgment of BNSF could affect Shipper's ability to meet payment terms, BNSF may require Shipper to pay cash in advance of service for all amounts for which Shipper is liable under this Common Carrier Authority. Shipper shall pay for such services within ten working days of receipt of a bill therefor.

Other Provisions: Shipments made under the provisions of this Common Carrier Authority are subject to the Uniform Freight Classification 6000-series or its successor, applicable tariffs, statutes, federal regulatory rules and regulations, AAR rules, and other accepted practices within the railroad industry as may be amended from time to time.

**BNSF Railway Company ("BNSF")
Common Carrier Pricing Authority BNSF 58280**

Effective Date: January 1, 2012

Commodity: Raw Subbituminous Coal, STCC 11-21-series. Not applicable for transportation of beneficiated, enhanced or synthetic coal; provided however, Coal treated with additives used exclusively for dust control or to reduce freezing shall not be considered "enhanced" or "beneficiated".

Origins: Spring Creek Mine – Nerco Jct., MT
Decker Mine – Decker, MT
Eagle Butte Mine – Eagle Butte Jct., WY
Buckskin Mine – Buckskin Jct., WY
Rawhide – Rawhide Jct., WY
Clovis Point – Clovis Point Jct., WY
Dry Fork – Dry Fork Jct., WY

Destination: Pueblo, CO for movement on Union Pacific Railroad from Pueblo to Arizona Electric Power Cooperative, Inc. Apache Generating Plant near Cochise, AZ

Route: Rule 11, BNSF – Pueblo, CO for movement beyond to the Apache Generating Plant via the Union Pacific Railroad

Rule 11 Rates and Minimum Weights: Weights stated in Net Tons Coal;
Rates stated in U.S. Dollars Per Net Ton Coal:

<u>Origin</u>	<u>Minimum Weight Per Carload</u>	<u>Shipper- provided Railcars</u>
Spring Creek - Nerco Jct., MT	118	\$17.18
Decker Mine - Decker, MT	118	\$16.99
Eagle Butte Mine – Eagle Butte Jct., WY	118	\$14.61
Buckskin Mine – Buckskin Jct., WY	118	\$14.66
Rawhide – Rawhide Jct., WY	118	\$14.55
Clovis Point – Clovis Point Jct., WY	118	\$14.46
Dry Fork – Dry Fork Jct., WY	118	\$14.52

Freight Charges will be assessed on the basis of the applicable Minimum Weight per Trainload or the actual weight of Coal per Trainload whichever is greater.

Railcar Supply and Tender Requirements: Shipper-provided Railcars shall be aluminum open top rapid discharge hopper cars suitable for loading not less than 118 net tons Coal per carload, not subject to any private car mileage allowance and furnished at no cost to BNSF.

The Minimum Tender for a train of Shipper-provided Railcars shall be one-hundred twenty (120) such Railcars. In the event that Minimum Tender for a train of Shipper-provided Railcars is not met due to BNSF's failure to switch such Railcars into a train at such location where BNSF has agreed to provide and Shipper has requested such service, the Minimum Weight per Trainload shall be reduced by an amount equal to the appropriate net tons for each Railcar (118 net tons for each Railcar) not so switched which results in a train of less than Minimum Tender.

**BNSF Railway Company ("BNSF")
Common Carrier Pricing Authority BNSF 58280**

Claims for damage to or destruction of either Shipper-provided or BNSF-provided Railcars shall be handled in accordance with the procedures set forth in the Field Manual and Office Manual of the Association of American Railroads Interchange Rules, as amended from time to time. Notwithstanding the foregoing, BNSF shall not be liable for loss or damage caused by defects in design, materials, or workmanship of Shipper-provided Railcars, or events of force majeure, or to improper loading or unloading performed by Shipper, its agent, its contractor, consignor or consignee.

Weights: Lading Weights shall be ascertained at Origin by Shipper, its agent, or the Coal mine operator, at no charge to BNSF, and will be provided to BNSF via either electronic data interchange or facsimile upon release of a loaded train. BNSF shall have the right to inspect and certify the Origin scales. The Minimum Weight per Trainload shall be the product of the Minimum Weight Per Carload times the Minimum Tender.

Loading: Shipper or its agent shall be responsible for the provision of appropriate loading facilities. All cars in each shipment shall be tendered to BNSF for loaded movement subject to the provisions of BNSF Price List 6041-series in effect on the date that service is provided.

Accessorial Services: BNSF-provided services ancillary to the linehaul transportation of Coal shall be provided in accordance with BNSF Price List 6041-series in effect on the date such services are requested.

Billing and Payment: Freight Charges will be billed by BNSF and paid by Shipper within ten working days of receipt of a bill therefor. BNSF will bill each shipment under the terms of the Uniform Straight Bill of Lading. All railcars for each shipment are to be billed on one (1) Bill of Lading. This **Common Carrier Authority BNSF 58280**, correct address and patron code must be shown on the Bill of Lading to insure accurate billing. In the event Shipper does not make timely payment, or if adverse credit conditions occur, which in the judgment of BNSF could affect Shipper's ability to meet payment terms, BNSF may require Shipper to pay cash in advance of service for all amounts for which Shipper is liable under this Common Carrier Authority. Shipper shall pay for such services within ten working days of receipt of a bill therefor.

Other Provisions: Shipments made under the provisions of this Common Carrier Authority are subject to the Uniform Freight Classification 6000-series or its successor, applicable tariffs, statutes, federal regulatory rules and regulations, AAR rules, and other accepted practices within the railroad industry as may be amended from time to time.

**BNSF Railway Company ("BNSF")
Common Carrier Pricing Authority BNSF 58281**

Effective Date: January 1, 2012

Commodity: Raw Subbituminous Coal, STCC 11-21-series. Not applicable for transportation of beneficiated, enhanced or synthetic coal; provided however, Coal treated with additives used exclusively for dust control or to reduce freezing shall not be considered "enhanced" or "beneficiated".

Origins: Signal Peak Mine –Peaks, MT

Destination: Pueblo, CO for movement on Union Pacific Railroad from Pueblo to Arizona Electric Power Cooperative, Inc. Apache Generating Plant near Cochise, AZ

Route: Rule 11, BNSF – Pueblo, CO for movement beyond to the Apache Generating Plant via the Union Pacific Railroad

Rule 11 Rate and Minimum Weights: Weights stated in Net Tons Coal;
Rates stated in U.S. Dollars Per Net Ton Coal:

<u>Origin</u>	<u>Minimum Weight Per Carload</u>	<u>Shipper- provided Railcars</u>
Signal Peak - Peaks, MT	118	\$22.01

Freight Charges will be assessed on the basis of the applicable Minimum Weight per Trainload or the actual weight of Coal per Trainload whichever is greater.

Railcar Supply and Tender Requirements: Shipper-provided Railcars shall be aluminum open top rapid discharge hopper cars suitable for loading not less than 118 net tons Coal per carload, not subject to any private car mileage allowance and furnished at no cost to BNSF.

The Minimum Tender for a train of Shipper-provided Railcars shall be one-hundred twenty (120) such Railcars. In the event that Minimum Tender for a train of Shipper-provided Railcars is not met due to BNSF's failure to switch such Railcars into a train at such location where BNSF has agreed to provide and Shipper has requested such service, the Minimum Weight per Trainload shall be reduced by an amount equal to the appropriate net tons for each Railcar (118 net tons for each Railcar).

Claims for damage to or destruction of either Shipper-provided or BNSF-provided Railcars shall be handled in accordance with the procedures set forth in the Field Manual and Office Manual of the Association of American Railroads Interchange Rules, as amended from time to time. Notwithstanding the foregoing, BNSF shall not be liable for loss or damage caused by defects in design, materials, or workmanship of Shipper-provided Railcars, or events of force majeure, or to improper loading or unloading performed by Shipper, its agent, its contractor, consignor or consignee.

Weights: Lading Weights shall be ascertained at Origin by Shipper, its agent, or the Coal mine operator, at no charge to BNSF, and will be provided to BNSF via either electronic data interchange or facsimile upon release of a loaded train. BNSF shall have the right to inspect and certify the Origin scales. The Minimum Weight per Trainload shall be the product of the Minimum Weight Per Carload times the Minimum Tender.

**BNSF Railway Company ("BNSF")
Common Carrier Pricing Authority BNSF 58281**

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Other Provisions: Shipments made under the provisions of this Common Carrier Authority are subject to the Uniform Freight Classification 6000-series or its successor, applicable tariffs, statutes, federal regulatory rules and regulations, AAR rules, and other accepted practices within the railroad industry as may be amended from time to time.

AEP CO Rate Prescription - January 1, 2012

Origin	Segment	Railroad	Miles	2	3	4	5	6	7	8	9	10	11	12	13	14
				Shipment	Type	Cars	Car Type	Ownership	per Car	Tons	Commodity	Type of Train	2011 Q3 Index	Indexed Cost/Ton	RVC Prescription	Maximum Rate/Ton
Lee Ranch	1	BNSF	287.4	OD	117	117	7	P	117.0	11	11	3	\$52,795.84	\$4.23	180%	\$7.82
	2	WEST	53.3	RD	117	117	7	P	117.0	11	11	3	\$14,709.24	\$1.18	180%	\$2.12
	Total												1,097,455.48			\$9.74
El Segundo	1	BNSF	280.5	OD	118	118	7	P	117.7	11	11	3	\$52,244.30	\$4.13	180%	\$7.43
	2	WEST	53.3	RD	118	118	7	P	117.7	11	11	3	\$14,855.47	\$1.17	180%	\$2.11
	Total												1,097,455.48			\$9.54
Eagle Butte Buckskin Rawhide Clovis Point Dry Fork Spring Creek Decker Signal Peak	1	BNSF	591.6	OD	116	116	7	P	118.0	11	11	3	\$101,232.26	\$8.12	180%	\$14.61
	2	BNSF	593.7	OD	116	116	7	P	118.0	11	11	3	\$101,567.95	\$8.14	180%	\$14.86
	3	BNSF	588.8	OD	116	116	7	P	118.0	11	11	3	\$100,784.68	\$8.08	180%	\$14.55
	4	BNSF	585.2	OD	116	116	7	P	118.0	11	11	3	\$100,209.22	\$8.03	180%	\$14.46
	5	BNSF	587.8	OD	116	116	7	P	118.0	11	11	3	\$100,624.83	\$8.07	180%	\$14.52
	6	BNSF	702.9	OD	116	116	7	P	118.0	11	11	3	\$119,023.45	\$9.54	180%	\$17.18
	7	BNSF	695.0	OD	116	116	7	P	118.0	11	11	3	\$117,760.65	\$9.44	180%	\$16.99
	8	BNSF	912.6	OD	116	116	7	P	118.0	11	11	3	\$152,543.18	\$12.23	180%	\$22.01
	9	BNSF														
	10	BNSF														

Origin Group
UP Miles
NM 149.7
PRB 928.6

Column
1 - 9
10
12
14

Source
NM Origins - 2011 Q3 actual cars/train and tons/car, PRB Origins - Actual cars/train and tons/car for most recent quarter with PRB activity (2009 Q3)
2010 URCS Phase III
Col 10 x Col 11 + Col 4 + Col 7
Col 12 x Col 13, rounded to the nearest \$0.01

ATTACHMENT NO. 3

From: Louise A. Rinn [<mailto:LARINN@up.com>]
Sent: Wednesday, December 28, 2011 3:58 PM
To: Robert Rosenberg
Cc: mrosenthal@cov.com; Danielle E. Bode; ssipe@steptoe.com; ALaRocca@steptoe.com
Subject: AEPCO Rate Prescription

Robert -- Attached are (i) a copy of the draft tariff that UP intends to publish on Friday 12/30/11 to become effective on 1/1/12 establishing proportional rates from Deming and Pueblo to be used in combination with BNSF rates from complaint origins to form a through movement to AEPCO at Cochise and (ii) a worksheet showing how UP calculated the rate.

We believe that establishing proportional rates simplifies future administration in light of the pendency of FD 35506 WCTL Petition for Declaratory Order regarding the purchase accounting treatment for the Berkshire Hathaway acquisition of BNSF. In addition, , we believe it is easier for both AEPCO and UP, as the destination carrier, to establish and update quarterly two rates from the different interchanges rather than separate rates for each BNSF-origin. We anticipate updating the rates in accordance with the procedures specified in the OG&E case when the PPI index is released in mid-January.

(See attached file: UP 4221 Tariff with Cochise Item 2300.pdf)

(See attached file: Calculations for UP 1-1-12 prescribed rate.pdf)

Please let me know if you have any questions or comments.

In the meantime, my best wishes for a happy and healthy New Year.

Lou Anne Rinn
Associate General Counsel
Union Pacific Railroad
402.544.3309

**

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ATTACHMENT NO. 4

From: Robert Rosenberg
Sent: Thursday, December 29, 2011 11:55 AM
To: Louise A. Rinn
Cc: mrosenthal@cov.com; Danielle E. Bode; ssipe@steptoe.com; ALaRocca@steptoe.com
Subject: RE: AEPCO Rate Prescription

Dear Lou Anne:

Thank you for your note.

With respect, AEPCO cannot agree that UP's approach complies with the Board's Order. BNSF/UP previously established joint through rates, AEPCO successfully challenged those rates, and the Board prescribed the maximum reasonable levels for those joint through rates. A proportional rate is simply not a joint through rate, regardless of whether BNSF establishes a corresponding proportional rate for the origins.

We urge the carriers to comply with the Board's prescription. If the carriers do not comply promptly, AEPCO will be compelled to seek enforcement at the Board. We would hope that such action would not be necessary, especially as the carriers have maintained a joint through rate from at least New Mexico origins for the past eleven years.

AEPCO provided the carriers with its calculations of the maximum reasonable joint through rates on December 13, 2011. To date, the carriers have not expressed any disagreement with AEPCO's calculations

Please let us know as soon as possible if the carriers do not intend to establish a joint through rate in compliance with the Board's order so that we can file with the Board. Also, please let us know as soon as possible if the carriers disagree with AEPCO's prescription calculations or the reparations calculations.

We do wish all of you a happy and healthy New Year.

Robert

From: Louise A. Rinn [<mailto:LARINN@up.com>]
Sent: Wednesday, December 28, 2011 3:58 PM
To: Robert Rosenberg
Cc: mrosenthal@cov.com; Danielle E. Bode; ssipe@steptoe.com; ALaRocca@steptoe.com
Subject: AEPCO Rate Prescription

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We believe that establishing proportional rates simplifies future administration in light of the pendency of FD 35506 WCTL Petition for Declaratory Order regarding the purchase accounting treatment for the Berkshire Hathaway acquisition of BNSF. In addition, , we believe it is easier for both AEPCO and UP, as the destination carrier, to establish and update quarterly two rates from the different interchanges rather than separate rates for each BNSF-origin. We anticipate updating the rates in accordance with the procedures specified in the OG&E case when the PPI index is released in mid-January.

(See attached file: UP 4221 Tariff with Cochise Item 2300.pdf)

(See attached file: Calculations for UP 1-1-12 prescribed rate.pdf)

Please let me know if you have any questions or comments.

In the meantime, my best wishes for a happy and healthy New Year.

Lou Anne Rinn
Associate General Counsel
Union Pacific Railroad
402.544.3309

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ATTACHMENT NO. 5

Comparison of 4Q11 Rates and Inputs Between BNSF, UP and AEP

Item (1)	Rate Per Ton			Index			Inputs			Cars per Train			Tons per Car		
	Dollars per Ton			Index			Inputs			Cars per Train			Tons per Car		
	Railroads (2)	AEP (3)	Difference (4)	Railroads (5)	AEP (6)	Difference (7)	Railroads (8)	AEP (9)	Difference (10)	Railroads (11)	AEP (12)	Difference (13)			
A. Lee Ranch															
1. BNSF (BNSF / SWRR)	\$7.62 / \$2.12	\$7.60 / \$2.11	(\$0.02) / (\$0.01)	1.09746 / 1.09570	1.09742 / 1.09493	(0.00004) / 0.00077	117.0	117.4	0.4	117.0	117.0	0.0			
2. UP	\$4.26	\$4.23	(\$0.03)	1.09374	1.09374	0.00000	117.5	117.4	(0.1)	117.1	117.0	(0.1)			
B. El Segundo															
1. BNSF (BNSF / SWRR)	\$7.43 / \$2.11	\$7.43 / \$2.11	\$0.00 / \$0.00	1.09746 / 1.09570	1.09742 / 1.09493	(0.00004) / 0.00077	118.0	117.6	(0.4)	117.7	118.4	0.7			
2. UP	\$4.26	\$4.23	(\$0.03)	1.09374	1.09374	0.00000	117.5	117.6	0.1	117.1	118.4	1.3			
C. Eagle Butte															
1. BNSF	\$14.61	\$14.56	(\$0.05)	1.09746	1.09742	(0.00004)	116.0	120.0	4.0	118.0	118.0	0.0			
2. UP	\$20.11	\$20.03	(\$0.08)	1.09374	1.09374	0.00000	116.0	120.0	4.0	118.0	118.0	0.0			
D. Buckskin															
1. BNSF	\$14.66	\$14.60	(\$0.06)	1.09746	1.09742	(0.00004)	116.0	120.0	4.0	118.0	118.0	0.0			
2. UP	\$20.11	\$20.03	(\$0.08)	1.09374	1.09374	0.00000	116.0	120.0	4.0	118.0	118.0	0.0			
E. Rawhide															
1. BNSF	\$14.55	\$14.49	(\$0.06)	1.09746	1.09742	(0.00004)	116.0	120.0	4.0	118.0	118.0	0.0			
2. UP	\$20.11	\$20.03	(\$0.08)	1.09374	1.09374	0.00000	116.0	120.0	4.0	118.0	118.0	0.0			
F. Clovis Point															
1. BNSF	\$14.46	\$14.40	(\$0.06)	1.09746	1.09742	(0.00004)	116.0	120.0	4.0	118.0	118.0	0.0			
2. UP	\$20.11	\$20.03	(\$0.08)	1.09374	1.09374	0.00000	116.0	120.0	4.0	118.0	118.0	0.0			
G. Dry Fork															
1. BNSF	\$14.52	\$14.47	(\$0.05)	1.09746	1.09742	(0.00004)	116.0	120.0	4.0	118.0	118.0	0.0			
2. UP	\$20.11	\$20.03	(\$0.08)	1.09374	1.09374	0.00000	116.0	120.0	4.0	118.0	118.0	0.0			
H. Spring Creek															
1. BNSF	\$17.18	\$17.12	(\$0.06)	1.09746	1.09742	(0.00004)	116.0	120.0	4.0	118.0	118.0	0.0			
2. UP	\$20.11	\$20.03	(\$0.08)	1.09374	1.09374	0.00000	116.0	120.0	4.0	118.0	118.0	0.0			
I. Decker															
1. BNSF	\$16.99	\$16.94	(\$0.05)	1.09746	1.09742	(0.00004)	116.0	120.0	4.0	118.0	118.0	0.0			
2. UP	\$20.11	\$20.03	(\$0.08)	1.09374	1.09374	0.00000	116.0	120.0	4.0	118.0	118.0	0.0			
J. Signal Peak															
1. BNSF	\$22.01	\$21.92	(\$0.09)	1.09746	1.09742	(0.00004)	116.0	120.0	4.0	118.0	118.0	0.0			
2. UP	\$20.11	\$20.03	(\$0.08)	1.09374	1.09374	0.00000	116.0	120.0	4.0	118.0	118.0	0.0			

Differences equal AEP less Railroads